

JUSTIFICATION OF ECP CHANGES

From Safety Evaluation SE-W375-99-00001, Part II, Section 2:

“Specific details of steps that are followed in the implementation of the Program have been moved from the ECP Description document (an Authorization Basis document) to project controlled Codes of Practice. The Regulatory Unit review of the original authorization document may have considered the level of detail related to the programmatic issues as a factor in the approval of the document. Based on this, the proposed change could result in a reduction in commitment as currently described in the Authorization Basis.”

REQUIREMENT

The requirement to implement a system to manage employee concerns is contained in the Contract Table S4-1. This requirement references the DOE Order 5480.29. Federal codes and statutes 10 CFR 708 and 29 CFR 24 are applicable to the RPP-WTP Project, and as such BNFL Inc. is prohibited from:

- acts of reprisal against employees who have voiced concerns regarding health and safety (10 CFR 708);
- or discrimination against employees engaged in the protected activities as specified in 29 CFR 24.

IMPLEMENTATION

To comply with contractual requirements, to assure that employee concerns were handled appropriately, and to avoid potential violation of Federal Law, BNFL Inc. implemented an Employee Concerns Program (ECP) as described in the “Employee Concerns Program Description and Instructions.” As required by contract, this document was submitted to the Regulatory Unit and implemented during Part A in 1997. The document included the policy statement and implementing instructions. In May 1998, in response to an issue raised by the RU during the review of the Integrated Safety Management Plan (ISMP), BNFL Inc. proposed a change to the ISMP to include the ECP Description and Instructions in the list of Authorization Basis (AB) documents. This change made the provisions of RL/REG-97-13 applicable to changes to the ECP. Until that time, BNFL Inc. had not considered the ECP to be an AB document and changes to the program had not been evaluated against the criteria contained in RL/REG-97-13.

CURRENT STATUS

As the project moved into Part B, BNFL Inc. implemented a BNFL business model. This model allowed for the development of policies, program plans, and implementing documents such as procedures, codes of practice, and instructions. Prior to this, few implementing procedures were in place on the project. Other organizational and administrative changes were implemented as Part B progressed. BNFL Inc. project management evaluated the combined effect of these changes and determined that the ECP Revision 0 needed to be changed.

CHANGES NEEDED

Revision 0 named an individual in Fairfax, Virginia, as the ECP Officer. It also named another individual as the ECP Coordinator for Part B; including a phone number and address. It identified that project partner employers would name coordinators for Part B. However, Project management appointed two on-site project managers as the Officer and Coordinator and provided that information to employees in the orientation training. The project offices were moved

from Terminal Drive to George Washington Way, making the cited addresses incorrect. These changes were regarded as not only essential to the implementation of a viable, robust program, but as improvements to the description in the ECP document. However, the changes were not initially incorporated into a revision of the ECP document.

The RU performed an inspection of the implementation of the ECP on the project. As a result of that inspection, the ECP staff, the ECP Officer, and the Safety and Regulatory Program (S&RP) Department determined that the change in management should be reflected in a revision to the ECP. The ECP staff and S&RP staff also determined that based on the business model, project employees would expect to find implementing instructions in project controlled documents such as procedures and codes of practice. Therefore, based on the new project business model, codes of practice were written to explain the steps to follow in reporting, investigating, and resolving employee concerns. Since the implementing instructions were placed in project documents, and since the ECP AB document was to be revised, BNFL Inc. decided to remove the instructions from the AB rather than repeating them in two documents.

SAFETY JUSTIFICATION

Although not stated in the RU acceptance of the ECP, after consultation with RU staff members, BNFL Inc. determined that removal of implementing instructions from an AB document could be regarded as a reduction in commitment. BNFL Inc. implementing instructions would continue to provide an effective ECP, however the commitment to obtain prior RU approval to changes in those instructions was reduced by removing them from an AB document.

The attributes needed to assure an effective program and an environment where employees feel free to express concerns regarding health and safety without fear of retaliation are described in RL/REG-96-03, "Guidance for Review of TWRS Privatization Contractor Employee Concerns Management System." These attributes are retained in the proposed revision of the ECP. The specific implementing steps may be changed, if BNFL Inc. determines in a review of those changes that conformance with the AB, the contract, and the law is maintained. The revised program continues to provide the employees the option of reporting concerns directly to the DOE or other agencies, if they choose not to participate in the project program. With the basic framework of an employee concerns program established in a program plan and implementing instructions located in procedures, codes of practice, or instructions, BNFL Inc. believes that effectiveness of program management and implementation can be increased.

The right to participate in protected activities is described in 29 CFR 24. BNFL Inc. is not allowed to challenge these rights by any change in the BNFL Inc. ECP or implementing documents. The same holds true for the protection provided by the requirements specified in 10 CFR 708. The right to participate in protected activities and the protection provided by Federal laws will exist regardless of content of the BNFL Inc. ECP. If BNFL Inc. had no program in place in which employees could express concerns, the right to bring these concerns to BNFL Inc. or other agencies would be protected. The Code of Federal Regulation would in turn protect any employee expressing concerns from retaliation, retribution, or any form of discrimination.

The right to express concerns in an environment that encourages freedom of expression is an important attribute of the RPP-WTP Project. The major safety goal of the RPP-WTP Project is to design, construct, and operate a facility that ensures the protection of the health and safety of the workers, co-located workers, the public, and the environment. This protection is assured by the implementation of the programs such as Integrated Safety Management (ISM) and described in various documents such as the Safety Requirements Document, the Integrated Safety Management Plan, and the Safety Analysis Reports. Relocation of implementing instructions from the ECP will not jeopardize this protection. Therefore, the relocation of implementing details of an employee concerns program into documents that are controlled by the Project staff will not reduce the radiological, process, or nuclear safety of the project.

In summary, by contract and by law, BNFL Inc. is not allowed to implement changes to basic rights and protection due to employees regardless of the RU status regarding those changes. The location of implementing instructions in documents that can be changed by BNFL Inc. without the prior approval of the RU will increase the effectiveness of the program while reducing the commitment to obtain that approval. Therefore, although the proposed changes reduce the commitment of obtaining RU approval for changes to implementing instructions originally included in the ECP according to the criteria specified in RL/REG-97-13; the proposed changes do not reduce;

- the effectiveness of the program,
- the rights and protection of the employees; or
- the radiological, process, or nuclear safety of the project.